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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/727,109	11/30/2000	Kurt Schunke	SCHUNKE	6814

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EXAMINER

BUCCI, DAVID A

ART UNIT	PAPER NUMBER
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3682

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/727,109

Applicant(s)

SCHUNKE ET AL

Examiner

Timothy P McAnulty

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14, 16 and 17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14, 16, and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Prosecution Reopened

1. In response to applicant's filing of the Notice of Appeal, filed 04 October 2004, and the Appeal Brief, filed 03 December 2004, prosecution in the instant application is hereby reopened.
2. The finality of the rejection of the last Office action is withdrawn. The following are the new grounds of rejection.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear how the crossbar connection to said rotary drive mechanism comprises a linkage system when the rotary drive mechanism directly rotates said crossbar. As claimed in claim 14 (on which claim 16 depends), the rotary drive mechanism is limited to directly acting on said crossbar to directly rotate the crossbar. The further limitation in claim 16 that the claimed connection further comprises a linkage system renders claim 16 indefinite. The connection cannot directly rotate and comprising a linkage system simultaneously.

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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6. Claims 14,16 and 17 as best understood are rejected under 35 U.S.C. 103(a) as being unpatentable over Bathrick et al. in view of Willis.

Bathrick et al. discloses in figures 1,2, and 4, a piece of motion furniture comprising a lifting mechanism 16 having a lifting arm 80,81,82,83 articulated to a footrest (not numbered) and a housing 46; an electric rotary drive mechanism 48,49 having an output member 60 fixed to and imparting rotational motion to a crossbar 50,51, said crossbar linked to said lifting arm and connected to said footrest; and stationary support means 14,15 connected to said housing via a bracket 71 including rods received in aligned bores in the wall of said housing. Bathrick et al. does not disclose a pantographic style linkage to facilitate movement of said footrest. However, Willis teaches in figures 7-9 a piece of motion furniture comprising, *inter alia*, a pantographic linkage 84 to facilitate movement of a footrest 14. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of Bathrick et al. in view of the teachings of Willis to facilitate movement of said footrest with a pantographic linkage so as to facilitate said footrest to adjust from an elevated horizontal position to a retracted vertical position thus providing additional footrest positioning increasing the versatility of said piece of furniture, especially for providing easy access and exit from said furniture for a user. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of Bathrick et al. in view of the apparatus of Willis to provide a pantograph linkage system to increase the rigidity of the footrest movement thus providing increased stability to the articulated footrest and improving overall ergonomics.

Response to Arguments

Applicant's arguments filed in the Appeal Brief have been fully considered but they are not persuasive.

First, Willis provides evidence on the desirability and motivation to modify the apparatus of Bathrick. The examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. *In re Nomiya*, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of the disclosures taken as a whole would suggest to one of ordinary skill in the art. *In re Simon*, 174 USPQ (CCPA 1972). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek*, 163 USPQ 545 (CCPA 1969). Additionally, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 170 USPQ 209 (CCPA 1971). As such the teachings of Willis are applicable to modify the apparatus of Bathrick. One of ordinary skill in the art of movable furniture would recognize the increased maneuverability and associated advantages of the footrest taught by Willis. Such benefits are specifically disclosed in Willis and include at least additional reclined positions, sitting positions, and positions designed to aid in standing and exiting the bed, all of

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which improve mobility, comfort, and convenience to patients and attendees. See e.g., lines 43-46 of column 1, lines 36-53 of column 2, line 35 of column 3 to line 3 of column 4 all of Willis.

Second, the test for obviousness is not whether features of one reference may be bodily incorporated into another reference to produce the claimed subject matter but is simply what the combination of references makes obvious to one of ordinary skill in the art. *In re Bozek*, 163 USPQ 545 (CCPA 1969). An obviousness rejection is based upon what the secondary reference would teach one of ordinary skill in the art and not whether the structure of the secondary reference could be bodily incorporated or substituted into the structure of the primary reference. *In re Richman*, 165 USPQ (CCPA 1970). As such, the mere fact that the structure of Willis, namely the pantograph linkage system, may not be easily bodily incorporated into the structure of Bathrick, does not negate a *prima facie* case of obviousness. The question is whether or not one of ordinary skill in the art would have been taught by the disclosure of Willis that the structure therein, namely a pantograph linkage system, is desirable in movable furniture, specifically articulated beds. As set forth above, such a modification is taught to be desirable and provides sufficient motivation.

Third, Bathrick does not teach away from incorporating pantograph linkage systems. Bathrick acknowledges that four bar mechanisms were known at the time of the invention of Bathrick. As such, Bathrick specifically acknowledges the suitability of four bar mechanisms for use within movable furniture. The mere fact that Bathrick provides an improvement to such mechanisms does not preclude one of ordinary skill in the art from relying on teachings of a secondary reference in order for further modification. Willis discloses specific rationale for incorporating a pantograph linkage system into movable furniture. Additionally, the reference

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combination need not operate similarly or functionally but only need meet the claimed limitations. Any functional or structural differences between the prior art and the present invention must be claimed to bear on patentability.

Fourth, the interpretation of the phrase “motion furniture” to include beds is not unreasonable. The specification does not specifically set forth a definition of the phrase nor is the phrase limited by secondary sources such as patents or dictionaries. The mere fact that applicant has cited several patents within the articulated furniture art that omit beds from a list of examples to support the phrase “motion furniture” does not preclude the fact that beds are motion furniture. A reasonable construction of the phrase includes any furniture, of which beds are furniture, and that such furniture has motion, of which any articulation provides motion. If such a definition, namely that motion furniture only includes chairs, is desired it must be positively claimed or clearly defined within the specification to be so limiting. Applicant’s arguments that the examiner has not afforded proper weight to the preamble of the claims are misplaced. It is not the location of the limitation within the claim but the construction of the phrase definition that establishes that motion furniture does not include beds.

Conclusion


7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy P McAnulty whose telephone number is 703.308.8684. The examiner can normally be reached on Monday-Friday (7:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, David Bucci can be reached on 703.308.3668. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


tpm


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